	Case5:11-cv-01199-EJD Documen	t1 Filed03/11/11 Page1 of 37
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2	GREGORY S. WESTON (239944) JACK FITZGERALD (257370)	231 NAR 11 A 9:23
3	888 Turquoise Street San Diego, CA 92109	RICHARD W. WIEKING OLF IK. 10.5. U-BACT COURT
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5	greg@westonfirm.com jack@westonfirm.com	ч
7	Counsel for Plaintiffs and the Proposed Classes	
8		ATES DISTRICT COURT
9	NORTHERN D	ISTRICT OF CALIFORNIA
10	SAN	JOSE DIVISION
11		Case No.:
12		CINSACTION 1199 HRL
13	·	COMPLAINT FOR:
14		VIOLATION OF TITLE III OF THE
15		AMERICANS WITH DISABILITY ACT OF 1990, 42 U.S.C. §§ 12181 <i>ET SEQ</i> .;
16	DONALD CHILEN on beleff of	VIOLATION OF CALIFORNIA'S UNFAIR
17 18	DONALD CULLEN, on behalf of himself and all others similarly situated,	COMPETITION LAW, CAL. BUS. & PROF. CODE §§ 17200 ET SEQ.;
19	Plaintiff,	VIOLATION OF CALIFORNIA'S FALSE
20	v.	ADVERTISING LAW, CAL. BUS & PROF. CODE §§ 17500 ET SEQ.;
21	NETFLIX, INC.,	VIOLATION OF CALIFORNIA'S
22	Defendant.	CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE §§ 1750 ET SEQ.; AND
23		
24		VIOLATION OF CALIFORNIA'S UNRUH CIVIL RIGHTS ACT, CAL. CIV. CODE § 51,
25		ET SEQ.
26		VIOLATION OF CALIFORNIA'S DISABLED PERSONS ACT, CAL. CIV. CODE §§ 54, ET
27		SEQ.
28		DEMAND FOR JURY TRIAL
		COMPLAINT
	il	

Plaintiff DONALD CULLEN, on behalf of himself, all others similarly situated, and the general public, by and through undersigned counsel, hereby sues Defendant NETFLIX, INC. ("Netflix") and, upon information and belief and investigation of counsel, allege as follows:

JURISDICTION AND VENUE

- 1. This Court has original federal question jurisdiction over this action pursuant to 28 U.S.C. § 1331. The Court also has original jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2) (the Class Action Fairness Act) because the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interest and costs and more than two-thirds of the members of the Classes reside in states other than the state of which Defendant is a citizen.
 - 2. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff suffered injuries as a result of Defendant's acts in this district, many of the acts and transactions giving rise to this action occurred in this district, and Defendant (1) is authorized to conduct business in this district and has intentionally availed itself of the laws and markets of this district through the promotion, marketing, distribution, and sale of their products in this district; (2) resides in this district; and (3) is subject to personal jurisdiction in this district.

INTRADISTRICT ASSIGNMENT

3. This civil action arises out of the acts and omission of Defendant Netflix, Inc., a company headquartered in Los Gatos, California, in Santa Clara County. Pursuant to Civil Local Rule 3-2(c), this action should be assigned to the San Jose Division.

INTRODUCTION

- 4. 36 million deaf and hard of hearing Americans rely daily on closed captioning, a system which displays text on a television or video screen—typically a transcription of the audio portion of the program as it occurs sometimes including non-speech elements—to provide interpretive information to viewers who need it (e.g., hearing viewers screening foreign films).
 - 5. Congress has long understood the importance of closed captioning in the lives of

deaf and hard of hearing Americans. Accordingly, federal law requires video programming distributors and providers like Netflix to caption (or *subtitle*—the terms are used interchangeably) all video programming "generally considered comparable to programming provided by[] a television station that is distributed and exhibited for residential use." 47 C.F.R. § 79.1(a)(1).

- 6. Netflix is the ubiquitous provider of both on-demand streaming video programming over the internet and flat-rate online DVD-Video and Blu-ray Disc rental-by-mail. Members pay a monthly subscription fee, which differs based on options selected, which a member can change at will on Netflix's website.
- 7. Although Netflix has offered streaming video programming since 2008, only a miniscule portion of its library is subtitled, in violation of federal law.
- 8. Adding insult to injury, Netflix repeatedly misled its deaf and hard of hearing members—who make up the putative Classes here—as to (a) the amount of subtitled content, (b) the rate at which it was adding subtitled content, and (c) the date by which a substantial portion of its library would be subtitled.
- 9. As a result of Netflix's failure to caption its programming, Plaintiff Donald Cullen, who is deaf, was effectively denied access to Netflix's full streaming video library though he paid a full subscription price.
- 10. What's more, Netflix imposes a "deaf tax" on its deaf and hard of hearing members. Last November, Netflix announced it would reduce the price for a streaming-only subscription for its members able to surrender access to its library of (well-captioned) physical DVDs and Blu-rays, which are delivered more expensively by mail.
- 11. Although the video programming Netflix provides might be considered leisure, Netflix's failure to meaningfully caption its content is a serious issue and emblematic of a larger struggle amongst the deaf and hard of hearing struggling to avoid being left behind by mainstream media and culture online.
- 12. Plaintiff brings this action on behalf of himself and all other similarly-situated deaf and hard of hearing Netflix members denied their rights under state and federal law, and

damaged as a result of Netflix's unlawful behavior.

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PARTIES

- 13. Plaintiff Donald Cullen is an individual and a resident of California.
- 14. Defendant Netflix, Inc. is a Delaware corporation with its principal place of business at 100 Winchester Circle, Los Gatos, California 95032.

FACTUAL ALLEGATIONS

Netflix Falsely Represented it Would Meaningfully Subtitle its Streaming Library

- 15. Netflix was established in 1997 and began offering its subscription flat-rate online video rental-by-mail service in September 1999. If the proportion of deaf and hard of hearing in the general population is reflected in Netflix's 22 million members, Netflix has over 2.5 million deaf and hard of hearing members.
- 16. Netflix began providing streaming video programming in or about January 2008. In order to access Netflix's streaming video programming, a consumer must have a device capable of receiving a signal from Netflix over the internet. In most cases, Netflix's streaming video service is integrated into hardware with related functions, like game consoles, Blu-ray players, digital video recorders, high definition televisions, computers, home theater devices and mobile devices. There are at least 35 such devices—and tens of millions of units—on the market today (including such popular gaming devices as the Sony PlayStation 3 and Microsoft Xbox 360, present in millions of American homes). In addition, there are some dedicated streaming devices, and almost any computer can be used to access Netflix's streaming video programming.
- 17. In a June 12, 2009 blog entry posted on Netflix's website, Neil Hunt, Netflix's Chief Product Officer, reacting to apparent inquiries, announced that "[c]aptioning is in our development plans," and that Netflix would "expect to deliver subtitles or captions to Silverlight clients sometime in 2010, and roll the same technology out to each CE device as we are able to migrate the technology"
 - 18. Mr. Hunt's June 12 statements falsely attributed Netflix's failure and inability to

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caption content sooner to supposed technical difficulties. At the same time Mr. Hunt was making these statements, other steaming video content providers (such as Hulu.com and YouTube.com) had captioned and were captioning substantial content, at a meaningful pace, using existing technology that Netflix likewise could have used.

- 19. Mr. Hunt's June 12, 2009 blog entry is attached hereto as Exhibit A.
- In an October 5, 2009 public email with the advocacy group the National 20. Association of the Deaf (NAD), Catherine Fisher, Netflix's Director of Communications, confirmed in response to a letter from the NAD that Netflix "frequently communicates its commitment to provide closed captioning for the TV episodes and movies you can watch instantly " Ms. Fisher further represented its "developers continue to work on closed captioning and we will keep the deaf and hard of hearing community apprised of the progress."
- 21. The letter and emails exchanged between Ms. Fisher and the NAD are publicly posted at http://www.nad.org/news/2009/10/nad-calls-out-netflix-captions. A copy is attached hereto as Exhibit B.
- 22. In an April 15, 2010 blog entry posted on Netflix's website, Neil Hunt announced the release of a "limited library" of about 100 captioned titles within Netflix's streaming video library available to watch only on a PC or Mac computer. Mr. Hunt also represented that Netflix "will be working to fill in the library over time" and that there was "much more to come."
- Mr. Hunt's April 15 post further represented Netflix "ha[s] similar technology 23. working in the lab for some of our game console, Blu-ray, and DTV platforms, which will roll out in releases starting this fall "
 - Mr. Hunt's April 15, 2010 blog entry is attached hereto as Exhibit C. 24.
- In a November 22, 2010 "tweet" on Twitter.com in response to tween by Marlee 25. Matlin, a well-known deaf actress with over 75,000 "followers" on Twitter, Netflix represented that it "offers CC [closed captioning] on a growing # of titles. You can use CC on PCs, Macs, upgraded PS3 app and upgrade Wii app."

A short (140 character maximum) message sent via the social networking and micro-blogging site, Twitter.com.

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- 26. Netflix's November 22, 2010 tweet is attached hereto as **Exhibit D**.
- 27. In a February 24, 2011 blog entry posted on Netflix's website, Neil Hunt falsely represented there are "more than 3,500 TV episodes and movies" with subtitles in Netflix's streaming library, "representing about 30% of viewing."
- 28. Mr. Hunt further represented "[m]ore subtitles are being added every week, and we expect to get to 80% viewing coverage by the end of 2011"
 - 29. Mr. Hunt's February 24, 2011 blog entry is attached hereto as **Exhibit E**.
- 30. Each of these statements was false and misleading when spoken. While Netflix made such public representations to the deaf and hard of hearing community where it largely interacts with the community, on its blog, Netflix's CEO, Reed Hastings told shareholders at a May 29, 2009 annual meeting that Netflix was not actively concerned with captioning its video programming.
- Each of these statements individually, and especially when combined together, 31. were designed to and did have the effect of conveying to Netflix's deaf and hard of hearing members that Netflix would meaningfully subtitle its steaming library within a reasonable period of time, and that it would provide related technology in a variety of hardware platforms.
- These statements were material to Plaintiff and the class members, who relied on 32. them in purchasing or maintaining monthly Netflix subscriptions.

Netflix Has Failed to Meaningfully Subtitle its Streaming Video Library

- 33. Despite making such statements for almost two years, Netflix's streaming video library remains effectively useless to deaf and hard of hearing members given the miniscule amount of its captioned content, lack of useful support tools, and Netflix's anemic captioning rate.
- Netflix's streaming library includes virtually every kind and genre of video 34. programming, including both movies and television. At the time of filing, Netflix's streaming

Case5:11-cv-01199-EJD Document1 Filed03/11/11 Page7 of 37

1	video programming includes 11,786 titles, with about 15 titles being added each day. ²
2	35. At the time of filing, only about 6% of Netflix's streaming video programming is
3	captioned.
4	36. Netflix is currently captioning its streaming video library at an approximate rate
5	of 2.33 titles per day.
6	37. Since Netflix first began streaming in January 2008, it has an overall captioning
7	rate of approximately 0.64 titles per day.
8	38. Since Neil Hunt announced Netflix's intention to caption the streaming video
9	library in June 2009, Netflix's captioning rate has been approximately 1.16 titles per day.
10	39. Since Neil Hunt announced Netflix's captioning of 100 titles in April 2010
11	Netflix's captioning rate has been approximately 2.00 titles per day.
12	40. Because Netflix is adding a total of about 15 titles to its streaming video library
13	each day, the percentage of the library captioned is actually declining, and Netflix's promise to
14	caption 80% of its library by the end of 2011 is not reflected in its behavior.
15	Netflix Imposes a Deaf Tax on its Deaf and Hard of Hearing Members
16	41. In a November 22, 2010 blog entry on Netflix's website, Jesse Becker, Netflix's
17	Vice President of Marketing, announced changes in Netflix's subscriptions offerings, creating
18	low-price streaming-only option and increasing the prices of its DVD-by-mail plans.
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27 28	² Netflix does not provide web-based access to its streaming library, but a third-party database uses Netflix's application programming interface to index and tally the library's titles, hosted a http://instantwatcher.com/titles/all.
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	COMPLAINT

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	Old price	New price
Unlimited plan (Ni		
No DVDs	***	\$7.99
Unlimited plan wit	h DVDs	
1 DVD out at a time	\$8.99	→ \$9.99
2 DVDs out at a tim#	\$13.99	→ \$14.99
3 DVDs out at a time	\$16.99	→ \$19.99
4 DVDs out at a time	\$23.99	→ \$27.99
5 DVDs out at a time	\$29.99	→ \$34.99
6 DVDs out at a time	\$35.99	→ \$41.99
7 DVDs out at a time	\$41.99	→ \$48.99
8 DVDs out at a time	\$47.99	→ \$55.99
Limited Plan		
1 DVD (limit 2 DVDs a month)	\$4.99	\$4.99

- 42. Netflix offered these plans beginning November 22, 2010 and continuing until the present. All DVD plans also include unlimited access to Netflix's streaming video programming, so long as the user has an appropriate device.
 - 43. Ms. Becker's blog entry is attached hereto as **Exhibit F**.
- 44. The following graphic represents the proportion of Netflix's streaming video library captioned on November 22, 2010, the day Netflix announced these subscription changes.³

Titles not captioned

Captioned

45. The limited selection of subtitled content in Netflix's streaming video library means the option of subscribing to the streaming-only plan effectively unavailable to Netflix's

³ A. Polk, *Tell Netflix: No captions, no money*, Nov. 23, 2010, *at* http://blog.deafpolitics.org/2010/11/tell-netflix-no-captions-no-money.html.

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deaf and hard of hearing members. Netflix has forced upon them a premium of at least \$2 per month—a veritable deaf tax.

46. In reality, the deaf tax premium is higher because, like Plaintiff, most deaf and hard of hearing consumers must purchase higher-level subscriptions to meet their viewing needs and habits. Plaintiff, for example, pays \$14.99 per month for Netflix's "unlimited 2 DVD" plan, a premium of \$7 over the streaming-only plan.

RELIANCE AND INJURY

- 47. Plaintiff became a Netflix member in May 2009, initially subscribing with the "unlimited 3 DVD" plan but later downgrading his subscription based on his viewing habits. If he could, Plaintiff would switch to the streaming-only plan Netflix currently offers, since this would be the most convenient given his viewing habits, and the cheapest video programming option.
- 48. None of Netflix's DVD plans are a satisfactory substitute since they lack the ondemand function of Netflix's streaming library and command premium pricing over the streaming-only subscription.
- 49. At various times after subscribing in May 2009, Plaintiff considered terminating his subscription. But despite his lack of access to Netflix's streaming video library and his inability to switch to the streaming-only plan because of its lack of meaningful captioning, Plaintiff maintained his Netflix subscription in reliance on Netflix's false representations and material omissions about the amount of subtitled content and Netflix's intentions and plans to add more.
- 50. Specifically, Plaintiff was exposed to, saw, read and relied upon, at or around the time they were made, Neil Hunt's statements in the June 12, 2009 Netflix blog; Catherine Fisher's statements in the October 2009 email exchange posted on the website of the NAD; Neil Hunt's statements in the April 15, 2010 Netflix blog; Neil Hunt's statements in the November 22, 2010 tweet; and Neil Hunt's statements in the February 24, 2011 Netflix blog.
 - 51. As a result of Netflix's misrepresentations and material omissions, Plaintiff paid

- more for his Netflix subscription, and would have only been willing to pay less, if anything at all, if he had not been mislead by the misrepresentations and omissions complained of herein. Plaintiff would not have purchased his Netflix subscription at the price he did absent Netflix's deceptive conduct.
- 52. For these reasons, Plaintiff's Netflix subscription was worth less than what he paid for it.
- 53. Plaintiff purchased video programming services from Netflix instead of competing distributors and providers based on the false statements and misrepresentations described herein.
- 54. Instead of receiving access to a streaming video programming library that had the advantages for Plaintiff inherent in a video programming library that is meaningfully captioned and/or which is being captioned at a meaningful rate, Plaintiff had access to a streaming video library with only occasionally-captioned content, which rendered it effectively useless to him.
- 55. Plaintiff lost money as a result of Netflix's deception in that he did not receive what he paid for. Plaintiff altered his position to his detriment and suffered damages in an amount equal to the amount he paid for his Netflix subscription.

CLASS ACTION ALLEGATIONS

56. Plaintiff brings this action on behalf of himself and all others similarly situated on behalf of the following Classes:

Damages Class

All deaf and hard of hearing persons (excluding officers, directors and employees of Netflix) who purchased, on or after January 1, 2008, a Netflix subscription in the United States for their own or household use.

Injunctive Relief Class

All deaf and hard of hearing persons (excluding officers, directors and employees of Netflix), in the market for captioned streaming video programming from Netflix in the United States for their own or household use.

- 63. Class representation is superior to other options for the resolution of the controversy. The relief sought for each Class member is small. Absent the availability of class action procedures, it would be infeasible for Class members to redress the wrongs done to them.
- 64. Netflix has acted on grounds applicable to the Classes, thereby making appropriate final injunctive relief or declaratory relief concerning the Classes as a whole.
- 65. Questions of law and fact common to the Classes predominate over any questions affecting only individual members.
- 66. Class treatment is appropriate under Federal Rule of Civil Procedure 23(a) and both 23(b)(2) and 23(b)(3). Plaintiff does not contemplate class notice if the class is certified under Federal Rule of Civil Procedure 23(b)(2), which does not require notice, and notice via publication if the class is certified under Federal Rule of Civil Procedure 23(b)(3) or if the Court determines class notice is required notwithstanding that notice is not required under Federal Rule of Civil Procedure 23(b)(2). Plaintiff will, if notice is required, confer with Defendant and seek to present the Court with a stipulation and proposed order on the details of a class notice plan.

FIRST CAUSE OF ACTION

Violations of Title III of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12181 et seq.

- 67. Plaintiff realleges and incorporates the allegations contained elsewhere in this Complaint as if fully set forth herein.
- 68. Title III of the ADA prohibits the discrimination against individuals on the basis of any disability in the full and equal enjoyment of goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases (or leases to), or operates a place of public accommodation, 42 U.S.C. § 12184(a), and requires reasonable modification of the policies, practices and procedures underlying such discrimination, *id.* § 12182(b)(2)(A)(ii-iv).
- 69. Discrimination under Title III encompasses the denial of the opportunity by the disabled to participate in programs or services, and providing the disabled with separate but

]	
1	unequal goods or services. Id. § 12182(b)(1)(A)(i-iii).
2	70. Netflix's streaming video library is a "place of accommodation" within the
3	meaning of the Act.
4	71. Netflix's failure to reasonably modify its streaming video library in order
5	accommodation access by the deaf and hard of hearing, as detailed herein, violated the Act.
6	72. As a direct and proximate result of Netflix's unlawful discrimination, Plaintiff at
7	members of the Damages Class have sustained injuries and damages.
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9	SECOND CAUSE OF ACTION
10	Violations of the California Unfair Competition Law
11	Cal. Bus. & Prof. Code §§ 17200 et seq.
12	(Unfair)
13	73. Plaintiff realleges and incorporates the allegations contained elsewhere in the
14	Complaint as if fully set forth herein.
15	74. Bus. & Prof. Code §§ 17200 et seq. prohibits any "unlawful, unfair or fraudule
16	business act or practice."
17	75. The acts, omissions, misrepresentations, practices, and non-disclosures of Netfl
18	as alleged herein constitute "unfair" business acts and practices because Netflix' conduct
19	immoral, unscrupulous, and offends public policy. Further, the gravity of Netflix' condu
20	outweighs any conceivable benefit of such conduct.
21	76. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining
22	Netflix from continuing to conduct business through unfair acts and practices alleged herein, a
23	to commence a corrective advertising campaign.
24	77. Plaintiff further seeks an order for the disgorgement and restitution of all monitoring
25	obtained by Netflix, which were acquired through acts of unfair competition.
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1		THIRD CAUSE OF ACTION
2		Violations of the California Unfair Competition Law Cal. Bus. & Prof. Code §§ 17200 et seq.
3 4		(Fraudulent)
5	78 . 1	Plaintiff realleges and incorporates the allegations contained elsewhere in this
6		fully set forth herein.
7	79.	Bus. & Prof. Code §§ 17200 et seq. prohibits any "unlawful, unfair or fraudulent
8	business act or	practice."
9	80.	The acts, omissions, misrepresentations, practices, and non-disclosures of Netflix
10	as alleged herei	in constitute "fraudulent" business acts and practices because Netflix' conduct has
1	a tendency to d	eceive both the Class members and the general public.
12	81.	In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining
13	Netflix from o	continuing to conduct business through fraudulent acts and practices and to
4	commence a co	prrective advertising campaign.
15	82.	Plaintiff further seeks an order for the disgorgement and restitution of all monies
16	obtained by Ne	tflix, which were acquired through acts of fraudulent competition.
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18		FOURTH CAUSE OF ACTION
9		Violations of the California Unfair Competition Law Cal. Bus. & Prof. Code §§ 17200 et seq.
20		(Unlawful)
21	83.	
22		Plaintiff realleges and incorporates the allegations contained elsewhere in this fully set forth herein.
23	_	Bus. & Prof. Code §§ 17200 et seq. prohibits any "unlawful, unfair or fraudulent
24	business act or	
25		The acts, omissions, misrepresentations, practices, and non-disclosures of Netflix
26 27		in constitute "unlawful" business acts and practices in that:
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- a. Netflix's conduct violates the Americans with Disabilities Act, as detailed herein;
- b. Netflix's conduct violates the False Advertising Law, as detailed herein;
- c. Netflix's conduct violates the Consumer Legal Remedies Act, as detailed herein;
- d. Netflix's conduct violates the California Unruh Civil Rights Act, as detailed herein;
- e. Netflix's conduct violates the California Disabled Persons Act, as detailed herein.
- 86. Netflix' conduct is further "unlawful" because it violates the Communications Act of 1934, as amended by the Telecommunications Act of 1996, 47 U.S.C. §§ 151 *et seq*.
- 87. The Communications Act of 1934 and its implementing regulations require all "video programming distributors" and "video programming providers" to provide closed captioning for all nonexempt video content. 47 C.F.R. §§ 79.1(b)-(c).
- 88. Netflix is a "video programming distributor" because it is a "distributor of video programming for residential reception [] deliver[ing] such programming directly to the home and is subject to the jurisdiction of the [Federal Communications] Commission." *Id.* § 79.1(a)(2).
- 89. Netflix is also a "video programming provider" because it is a video programming distributor and because it "provides video programming that is intended for distribution to residential households" *Id.* § 79.1(a)(3).
- 90. The video content at the heart of Netflix' business is not exempt video programming and thus is subject to the Communications Act and related closed captioning regulations. By failing to provide closed captioning for its video content Netflix is in violation of the Act, and therefore violates the "unlawful" prong of the UCL.
- 91. In accordance with Bus. & Prof. Code § 17203, Plaintiff seeks an order enjoining Netflix from continuing to conduct business through unlawful acts and practices and to commence a corrective advertising campaign.
- 92. Plaintiff further seeks an order for the disgorgement and restitution of all monies obtained by Netflix, which were acquired through acts of unlawful competition.

FIFTH CAUSE OF ACTION

Violations of the California False Advertising Law Cal. Bus. & Prof. Code §§ 17500 et seq.

- 93. Plaintiff realleges and incorporates the allegations contained elsewhere in this Complaint as if fully set forth herein.
- 94. In violation of Bus. & Prof. Code §§ 17500 *et seq.*, the advertisements, labeling, policies, acts, and practices described herein were designed to, and did, result in the purchase and use by Plaintiff and members of the Classes of unsatisfactory streaming video service without the knowledge that Netflix would not honor its promise to meaningfully subtitle its streaming video library.
- 95. Netflix either knew or reasonably should have known that its statements concerning the amount of subtitled content, and its efforts to add more subtitled content, were untrue and/or misleading.
- 96. As a result, Plaintiff, the Classes, and the general public are entitled to injunctive and equitable relief, restitution, and an order for the disgorgement of monies by which Netflix was unjustly enriched.

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SIXTH CAUSE OF ACTION

Violations of the Consumer Legal Remedies Act Cal. Bus. & Prof. Code §§ 1750 et seq.

(Injunctive Relief and Restitution)

- 97. Plaintiff realleges and incorporates the allegations contained elsewhere in this Complaint as if fully set forth herein.
- 98. The CLRA prohibits deceptive practices in connection with the conduct of a business that provides goods, property, or services primarily for personal, family, or household purposes.
- 99. Netflix' policies, acts, and practices were designed to, and did, result in the purchase and use of the products primarily for personal, family, or household purposes, and

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- § 1770(a)(5): representing that goods have characteristics, uses, or benefits
- § 1770(a)(7): representing that goods are of a particular standard, quality, or
- § 1770(a)(9): advertising goods with intent not to sell them as advertised;
- § 1770(a)(16): representing the subject of a transaction has been supplied in accordance with a previous representation when it has not.
- The conduct described herein was long-standing and undertaken for profit as a deliberate and uniform corporate policy rather than an isolated incident. Netflix knew its statements were false, knew it violated the law, knew consumers would be misled, and knew that it was cheating them. Its conduct was morally wrong, fraudulent, callous, and oppressive.
 - Pursuant to Civ. Code § 1780, Plaintiffs are entitled to restitution.

Violation of the Unruh Civil Rights Act, Cal. Civ. Code §§ 51, et seq.

- Plaintiff realleges and incorporates the allegations contained elsewhere in this
- The Unruh Civil Rights Act, California Civil Code §§ 51 et seq. guarantees equal access for people with disabilities to the accommodations, advantages, facilities, privileges and
- Netflix is systematically violating the Unruh Civil Rights Act. Netflix is a "business establishment" within the meaning of the Act. Patrons of Netflix who are deaf and hard of hearing have been denied full and equal access to Netflix's streaming video library, have not been provided services that are provided to other patrons who are not disabled, and/or have provided services to the disabled that are inferior to the services provided to non-disabled
- Netflix is also violating the Unruh Civil Rights Act in that the conduct alleged herein constitutes a violation of Title III of the Americans with Disabilities Act of 1990, 42

1 PRAYER FOR RELIEF WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the 2 general public, prays for judgment and relief against Defendant as follows: 4 Declaring this action to be a proper class action and ordering Netflix to bear the A. cost of class notice; 5 Compelling Netflix to meaningfully subtitle its streaming video library; B. 6 Enjoining Netflix from marketing its streaming video services as being C. 7 meaningfully subtitled or closed-captioned unless and until its streaming video 8 library is meaningfully subtitled or closed-captioned; 9 Compelling Netflix to conduct a corrective advertising campaign to alert the D. public, and the deaf and hard of hearing community in particular, of its previous 10 false and misleading statements and omissions; 11 E. Requiring Netflix to restore all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or fraudulent business act or 12 practice, untrue or misleading advertising, plus pre-and post-judgment interest 13 thereon: 14 F. Requiring Netflix to disgorge all monies, revenues, and profits obtained by means of any other wrongful act or practice alleged herein; 15 G. Statutory damages; 16 H. Actual damages; 17 Punitive damages; I. 18 Costs, expenses, and reasonable attorneys' fees; 19 J. 20 K. Any other and further relief the Court deems necessary, just, or proper. 21 22 23 24 25 26 27 28

Jury Demand Plaintiffs demand a trial by jury on all causes of action so triable. 3 DATED: March 11, 2011 Respectfully Submitted, 5 6 7 THE WESTON FIRM 8 JACK FITZGERALD (257370) 2811 Sykes Ct. 9 Santa Clara, California 95051 Telephone: (408) 459-0305 10 Facsimile: (480) 247-4553 jack@westonfirm.com 11 12 GREGORY S. WESTON (239944) 888 Turquoise Street 13 San Diego, CA 92109 Telephone: (858) 488-1672 14 Facsimile: (480) 247-4553 greg@westonfirm.com 15 16 Counsel for Plaintiffs and the Proposed Classes 17 18 19 20 21 22 23 24 25 26 27 28 19

Exhibit A

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NETFLIK

The Netflix Blog

FRIDAY, JUNE 12, 2009

Closed Captions and Subtitles

This is Neil Hunt, Chief Product
Officer at Netflix. We've had some inquiries about why Netflix doesn't yet provide closed captioning or subtitles for streaming movies and TV episodes.
Captioning is in our development plans but is about a year away.

You might be asking how it could be so hard, since we already subtitle foreign language streams with English subtitles. These subtitles are "burned in" to the video stream at the time of encoding - they are so-called "open captions" that cannot be turned on and off by the viewer. The majority of viewers would object to English captions on English content, so we have to figure out how to let individual viewers turn them on and off.

Encoding a separate stream for each title is not an option - it takes us about 500 processor-months to make one encode through the entire library, and for this we would have to re-encode four different formats. Duplicating the encoded streams is prohibitive in space too.

So we are working on optionally delivering the SAMI file (Synchronized Accessible Media Interchange), or similar, to the client, and having it render the text and then overlay it on the video at playback time. Unfortunately, the tools for rendering SAMI files in Silverlight, or in CE (Consumer Electronics) devices, are weak or non-existent, and there is some technology development required.

I would expect to deliver subtitles or captions to

LINKS

Netflix Tech Blog Facebook Netflix Page Netflix Website

- - -> RSS Feed Page
- - -> DVDs Releasing This Week
- - -> Logo and Media Materials
- - -> Jobs at Netflix

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BLOG ARCHIVE

- ▶ 2011 (4)
- **▶** 2010 (27)
- ▼ 2009 (38)
 - ▶ December (1)
 - November (5)
 - October (2)
 - ➤ September (3)
 - ► August (2)
 - **▶** July (2)
 - **▼** June (4)

Closed Captions and Subtitles

Message to Netflix subscribers who watch

Twitter For Websites: Tweet Button

Silverlight clients sometime in 2010, and roll the same technology out to each CE device as we are able to migrate the technology, and work with the CE manufacturer to deliver firmware updates for each player.

POSTED BY NDH AT 4:02 PM LABELS: CAPTION, CLOSED CAPTION, SAMI, STREAMING, SUBTITLES

696 COMMENTS:

1 - 200 of 696 Newer> Newest»

Matthew said...

Well said. I can see now why it is "so hard" to do. I've only needed captions for a few Englishlanguage movies here and there, that literally had English or Irish characters. The accents get so thick, it's hard for me to catch every word.

I can't promise you'll get many thoughtful replies to your blog post (All these people know how to do is talk about everything else **BUT** what you brought up), but I appreciate the explanation, nonetheless.

JUNE 12, 2009 4:44 PM

A Deaf Pundit said...

Sir, YouTube already provides this technology to accommodate the Deaf and Hard of Hearing.

So quite frankly, I find Netflix's claim that this will take a year to develop and implement, hard to believe.

instantly...

Vote for the film you think should win the Netflix...

New Ways to Enjoy Netflix on your Xbox 360

- ► May (4)
- ► April (3)
- ➤ March (5)
- ► February (3)
- ► January (4)
- ▶ 2008 (57)
- **>** 2007 (105)

LABELS

Requests for Feedback (33)

New Features (28)

Friends Features (25)

Release Notes (20)

general (17)

minor bugs (14)

Reviews (10)

Tips 'n' Tricks (9)

streaming (9)

System Notices (6)

Instant Watching (5)

Similarity (5)

Queue (4)

RSS (4)

User Experience Rants (4)

Avatars (3)

Ratings (3)

Search (3)

caption (3)

closed caption (3)

devices (3)

devices netflix (3)

iphone (3)

nintendo (3)

Exhibit B

Mational Association of the Deaf

Donate Now

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About Us

Issues & Resources

Youth Leadership

Community

News and Media

NAD Calls Out Netflix on Captions



Submitted By Admin On Mon. 10/05/2009 - 12:48

On September 9, 2009, the National Association of the Deaf requested that Netflix provide a captioned version of "The Wizard of Oz" movie that Netflix made available online, for free, for everyone on October 3, 2009. Netflix disregarded the NAD request along with thousands of letters, emails, comments, and tweets urging Netflix to caption the movie. Today, the NAD expressed its dismay at the lack of any response from Netflix and its failure to make this 70th anniversary celebration of "The Wizard of Oz" accessible to 36 million deaf and hard of hearing viewers.

Here is what the NAD said:

Monday, October 5, 2009

Catherine Fisher Director, Communications Netflix, Inc. cafisher@netflix.com

Ms. Fisher -

On September 9, 2009, the National Association of the Deaf (NAD) wrote to you in response to Netflix's announcement that "The Wizard of Oz" would be freely available to everyone on October 3rd, the 70lh anniversary of this classic film. We requested that Netflix enable people to choose to view a captioned version of this classic film by placing a "CC" icon on your webpage linked to the captioned version. We urged Netflix to take advantage of this unique opportunity to demonstrate its commitment to providing accessible entertainment to 36 million deaf and hard of hearing Americans. See http://www.nad.org/node/442. In addition to the NAD, Academy Award winning actress Marlee Mattin and many other people appealed to Netflix to caption "The Wizard of Oz."

The process of captioning "The Wizard of Oz" is technically possible and relatively simple to achieve. The television version and the DVD version of the film have already been captioned. Captions can be programmed into the Microsoft Silverlight application that Netflix uses for its Watch Instantly feature. Captions have been included in videos, programming, and movies made available for viewing online. See, for example, http://www.hulu.com.

We received no response from Netflix. Our request for a captioned version of "The Wizard of Oz" on October 3rd was not honored. Unlike the characters in "The Wizard of Oz," Netflix looks like it is still searching for its brain, heart, and courage. We view Netflix's lack of response and lack of captioning for "The Wizard of Oz" as a blatant statement by Netflix that 36 million deaf and hard of hearing people are second class citizens. This is the message that our community received from Netflix.

Netflix must commit to a policy and timetable to provide captions for its online movie service to ensure equal access to this service by Netflix account holders who are deaf or hard of hearing. Such a policy is a not only a good business practice, it's the right thing to do

In addition, we ask Netflix to meet with NAD representatives, and the courtesy of a response to this invitation.

Rosaline Crawford Director Law and Advocacy Center National Association of the Deat 8630 Fenton Street. Suite 820 Silver Spring, MD 20910

UPDATE - Netflix Responded; Declined Invitation to Meet with the NAD

COMMENTS

PEOPLE RECENT POPULAR

RECENT COMMENTS



Anne-Marie We have the same problem at Centre Jules-Léger in

Ontario...they teach LSQ there but the school director doesn't no sign language and cut the interpretor service because he thinks that we,

Act Now to Protect Schools for the Deaf · 2 days ago



Coolgraham2 It is important to keep Deaf Schools in 47 States. It should be

keep 11 deaf schools in New York State. I hope State of New York Governor will change his mind and will keep 11 deaf schools

NAD Action Alert: Preserve State Schools for the Deaf · 2 days ago



Nmagliocchino Wow.. I have to learn something from you.. It's waste the money

for pay the budget. I hope so. Texas School for the deaf stay open for forever.

NAD Action Alert: Preserve State Schools for the Deaf · 2 days ago



Karen Kingrey This video of Californía Dept of Education impressed me. I praise them for doing this excellent job to show the video. It will be ven helpful to the parents of deaf children. I wish this video .. Dept. of Ed Video on ASL 2 days ago



Darlene Rojas WHY NOT closure hearing schools due hearing schools MORE than

one in EACH CITIES in ONE STATE in EACH STATES THAT cost ALOT money to spend! Deaf schools ONLY ONE school in EACH STATES in ONE CITY. **Act Now to Protect Schools** for the Deaf · 2 days ago

community on DISQUES

Case5:11-cv-01199-EJD Document1 Filed03/11/11 Page26 of 37

NAD Calls Out Netflix on Captions | National Association of the Deaf

Monday, October 5, 2009

Ms. Crawford:

Thank you for your email. Netflix frequently communicates its commitment to provide closed captioning for the TV episodes and movies you can watch instantly and here is a blog post which provides more background http://blog.netflix.com/2009/06/closed-captions-and-subtitles.html

It was not simple for Netflix to instantly stream the Wizard of Oz this past weekend, otherwise we would have done it. Netflix developers continue to work on closed captioning and we will keep the deaf and hard of hearing community apprised of the progress.

Regards,
Catherine Fisher
Tuesday, October 6, 2009
Ms. Fisher
Thank you for your response.
Our constituency is keenly interested in seeing Netflix online services made accessible through the provision of captions.
We would like to meet with Netflix to discuss this issue and your progress. Would that be possible?
Rosaline
Wednesday, October 7, 2009
Ms. Crawford:
We understand your eagerness to see closed captioning on movies and TV episodes instantly streamed from Netflix. As Netflix Chief Product Officer Dr. Neil Hunt explained on the Netflix Blog the technical process is complex.
Since closed captioning is included in our development plans and since we have addressed the situation at length we are goin to decline the invitation to meet.
Thank you for your understanding and I will be sure to keep you apprised of progress.
All best,
Catherine
The NAD is disappointed that Netflix declined our invitation to meet. While we are pleased to learn that closed captioning is included in Netflix development plans, "seeing is believing."
dvocates need to continue to request captioning on Netflix Watch Instantly movies by sending messages to Netflix by Twitter via Netflix twitter account at http://www.twitter.com/netflixhelps or @netflix and http://www.twitter.com/netflixhelps or

Advocates need to continue to request captioning on Netflix Viator instantly movies by sending messages to Netflix by I whiter via the Netflix twitter account at http://www.twitter.com/netflix or @netflix and http://www.twitter.com/netflix http://www.twitter.com/netflix blog at http://www.twitter.com/netflix http://www.facebook.com/netflix, by posting comments on the Netflix blog at http://blog.netflix.com/, and contacting:

Catherine Fisher
Director, Communications
Netflix, Inc.
cafisher@netflix.com
408-540-3847
and
Netflix Customer Service
1-866-716-0414





NAD Calls Out Netflix on Captions | National Association of the Deaf

SHOWING 5 COMMENTS

Sort by Popularnow Subscribe by email Subscribe by RSS
ncmacasi 4 months ago
Netflix Subtitles are now also available on Wii and PS3 (started 10/18/10). Download the latest software (disk no longer required on either system)
See: http://blog.netflix.com/2010/1
Partial list of Captioned Netflix Titles: http://ncmacasl.blogspot.com/2
Like Reply 1 person liked
Angela 8 months ago
Thank you NAD for your effort in this! My husband and I, within the last few months, subscribed to Netflix and it was obviously rude awakening for me that their instant streaming was not captioned. I appreciate your efforts in communicating the issue to them. I also laughed at your great responses! =)
Like Reply: 1 person liked
DeafReader 11 months ago
Can you call out Apple's iTune on caption as well? Apple released over 350 both rental and purchases of movies with captions
Like Reply 1 person liked
Tomjones 2 months ago
just leave netflix
Like Reply
Johnnie 4 months ago
Today I just sent an email to Catherine on the topic related to the 21st Century Communications and Video Accessibility Act of 2010 and instantly streaming accessible for the deaf community.
Like Reply
ADD NEW COMMENT
Type your comment here.
Post as
Trackback URL http://discus.com/forums.ident/ined_calls_out_nri

Exhibit C

NETFLIX

The Netflix Blog

THURSDAY, APRIL 15, 2010

Subtitles Now Available for Some Titles for PC/Mac Viewing

This is Neil Hunt, Chief Product Officer at Netflix. As I promised last year, I'm pleased to report that today we have enabled closed



captioning for some TV episodes and movies that you can watch instantly on your PC or Mac. Although it's a limited library of content with subtitles available - about 100 titles - we now have released the technology and we will be working to fill in the library over time.



We have similar technology working in the lab for some of our game console, Blu-ray, and DTV platforms, which will roll out in releases starting this fall, along with support for 5.1 audio.

It's a start, with much more to come. You can try it for yourself with most episodes of "Lost" Seasons 1-4.

POSTED BY NDH AT 10:30 PM [14]
LABELS: CAPTION, CC, CLOSED CAPTION, ENCODING, NEW FEATURES, SILVERLIGHT, STREAMING, SUBTITLES

LINKS

Netflix Tech Blog Facebook Netflix Page

Netflix Website

- - -> RSS Feed Page
- - -> DVDs Releasing This Week
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- - -> Jobs at Netflix

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- **▶** 2011 (4)
- ▼ 2010 (27)
 - ► December (3)
 - November (4)
 - October (3)
 - ➤ September (3)
 - August (2)
 - ➤ July (1)
 - ▶ June (1)
 - ► May (1)
 - ▼ April (4)

Subtitles Now Available for Some Titles for PC/Mac...

Exhibit D



Exhibit E

Share Report Abuse Next Blog»

Create Blog Sign In

The Netfix Blog

THURSDAY, FEBRUARY 24, 2011

30% of Netflix Streaming Content Has Subtitles; 80% By End of 2011

This is Neil Hunt, Chief Product Officer for Netflix, with an update on subtitles on content available to watch instantly from Netflix. In the

134 △ 12812

US, more than 3,500 TV episodes and movies have subtitles available, representing about 30% of viewing. (This is in addition to the subtitles already available "burned in" to the picture for all non-English content.) More subtitles are being added every week, and we expect to get to 80% viewing coverage by the

end of 2011 (with similar goals for Canada).

We've added this page on the Netflix Website that lists all of the TV shows and movies that are available with subtitles. It is accessible via a link in the Netflix Website footer, via search (for "subtitle" or "caption"), or linked from the detail page of any title that has subtitles.

Subtitles are supported on PCs and Macs, Nintendo Wii, Sony PS3, GoogleTV, and the Boxee Box. We expect that Roku and Xbox 360 will support subtitles later this year. Most new Netflix ready devices released this summer or later will support subtitles

For content that has subtitles, look for the Subtitles button in the player on the PC/Mac:

LINKS

Netflix Tech Blog Facebook Netflix Page Netflix Website

- - -> RSS Feed Page

- - -> DVDs Releasing This Week

- - -> Logo and Media Materials

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BLOG ARCHIVE

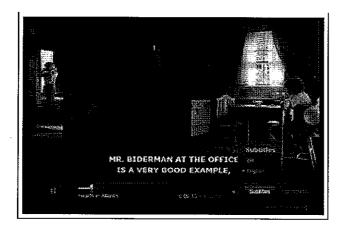
▼ 2011 (4)

▼ February (2)

30% of Netflix Streaming Content Has Subtitles; 80...

NETFLIX BRINGS
MEMBERS CBS SHOWS
TO WATCH INSTANTL...

- ► January (2)
- ▶ 2010 (27)
- **2009 (38)**
- 2008 (57)
- **▶** 2007 (105)



On Netflix ready devices, look for Audio and Subtitles on the movie or TV show detail page before you begin playing:





POSTED BY NDH AT 11:25 PM LABELS: CAPTION, CLOSED CAPTION, STREAMING, SUBTITLES

99 COMMENTS:

NC-mac-ASL said...

LABELS

Requests for Feedback (33)

New Features (28)

Friends Features (25)

Release Notes (20)

general (17)

minor bugs (14)

Reviews (10)

Tips 'n' Tricks (9)

streaming (9)

System Notices (6)

Instant Watching (5)

Similarity (5)

Queue (4)

RSS (4)

User Experience Rants (4)

Avatars (3)

Ratings (3)

Search (3)

caption (3)

closed caption (3)

devices (3)

devices netflix (3)

iphone (3)

nintendo (3)

subtitles (3)

wii (3)

Silverlight (2)

encoding (2)

netflix (2)

playstation (2)

ps3 (2)

sony (2)

Apple TV (1)

Exhibit F

The Netflix Blog

MONDAY, NOVEMBER 22, 2010

A new plan for watching instantly, plus price changes to existing unlimited plans

Hi, Jessie Becker here, VP Marketing, with an update about changes we are making today to our plans and prices.



First, we are now offering a new \$7.99 a month plan which lets you instantly watch unlimited TV episodes and movies streamed to your computer or TV. This plan does not include any DVDs. All the titles you can watch instantly on your current plan are also available on this new plan, and as a reminder, not all titles on DVD are available to watch instantly. This new plan is available immediately - if you'd like to switch to this new plan at any time, simply visit Your Account.

Second, we are increasing the prices on our unlimited plans that offer both watching instantly and DVDs by mail. On our two most popular unlimited plans – the 1 DVD out at a time and 2 DVDs out at a time – the price is increasing by \$1 a month. We've also included below the changes on all the plans. To see how these changes impact your Netflix account, visit Membership Details.

Why the changes? Our selection of TV episodes and movies available to stream has grown dramatically, and as a result most members want us to deliver unlimited TV episodes and movies two ways: streaming instantly over the internet plus DVDs by mail. The price increase will allow us to continue to offer the popular plan choice of unlimited TV

LINKS

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Netflix Website

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- **▶** 2011 (4)
- ▼ 2010 (27)
 - ▶ December (3)
 - ▼ November (4)

Netflix Executives'

Comments: True or False?

A new plan for watching instantly, plus price chan...

Netflix on Android

XBox and Windows Phone 7 News

- October (3)
- ➤ September (3)
- ► August (2)

episodes and movies streaming instantly along with unlimited DVDs. The new plan, which does not include DVDs, is a great option for the increasing number of members who only want to watch instantly. The \$7.99 a month price reflects no DVD shipping costs on this plan.

You might also wonder why we haven't introduced a new plan that includes only DVDs by mail. The fact is that Netflix members are already watching more TV episodes and movies streamed instantly over the Internet than on DVDs, and we expect that trend to continue. Creating the best user experience that we can around watching instantly is how we're spending the vast majority of our time and resources. Because of this, we are not creating any plans that are focused solely on DVDs by mail.

To avoid any confusion, here are the new prices on our plans:

oui piaris.	\$750 total	.,
	Old price	New price
Unlimited plan (N		1 2 1 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2 2
No DVDs	144-	\$7.99
Unimited plan wit	h DVDs	
1 DVD	\$8.99	→ \$ 9.99
2 DVDs	\$13.99	→ \$14.99
3 DVDs	\$16.99	→ \$19.99
4 DVDs	\$23.99	→ \$27.99
5 DVDs	\$29,99	→ \$34.99
6 DVDs	\$35.99	→ \$41.99
7 DVDs	\$41.99	→ \$48.99
8 DVDs	\$47.99	→ \$55.99
Limited Plan	Control (C. 17) (G.) Carlo	
1 DVD (šmit 2 0VDs a morth)	\$4.99	\$4.99

We hope you're enjoying great TV shows and movies from Netflix, and that you'll continue to enjoy Netflix on whichever plan you choose. We realize you have lots of home entertainment options, and we thank you for your business. As always, if you have any questions, please call us at 800-715-2146.

UPDATE: A number of you have asked about Blu-ray pricing. Blu-ray pricing remains the same.

- ▶ July (1)
- ▶ June (1)
- ► May (1)
- April (4)
- ► March (4)
- ▶ January (1)
- **▶** 2009 (38)
- 2008 (57)
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LABELS

Requests for Feedback (33)

New Features (28)

Friends Features (25)

Release Notes (20)

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User Experience Rants (4)

Avatars (3)

Ratings (3)

Search (3)

caption (3)

closed caption (3)

devices (3)

devices netflix (3)

iphone (3)

nintendo (3)

subtitles (3)

wii (3)

Silverlight (2)